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## Media Access to Juvenile Records: In Search of a Solution

Shannon McLatchey

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# **MEDIA ACCESS TO JUVENILE RECORDS: IN SEARCH OF A SOLUTION**

Shannon F. McLatchey<sup>†</sup>

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## INTRODUCTION

For the investigative reporter, records often form the factual basis of groundbreaking stories that can ultimately lead to great changes in society.<sup>1</sup> Information in juvenile records may lead a reporter to investigate aspects of the juvenile justice system that extend far beyond the stories of individual juvenile offenders. The reporter may report on the judges, attorneys, social workers, detention centers, and rehabilitative programs that create the juvenile justice system.<sup>2</sup> For example, suppose a juvenile justice reporter learns from a confidential source that juveniles ordered to pay restitution to crime victims rarely make the ordered payments.<sup>3</sup> In this jurisdiction, many juveniles fail to pay restitution, and the court is not able to threaten them with imprisonment for nonpayment. To report on the amount of restitution owed in the county and the procedures by which the juvenile court ensures compliance with restitution orders, the reporter will need access to juvenile court records showing the amount of restitution ordered, the amount that remains unpaid, and the court's authority to enforce restitution orders. Even if the juvenile justice reporter's investigation does not focus on the identity of any specific juvenile, the reporter faces an uphill battle to gain access to juvenile records. Historically, courts have kept juvenile records confidential, and records custodians continue to apply a broad standard of confidentiality.

This Article examines whether states should change juvenile confidentiality laws to allow greater media access to juvenile records. Part I of this Article describes the history of the juvenile justice system and its tradition of closed juvenile records. Part II discusses the reasons why increased media access to juvenile records would benefit both the public and the juvenile justice system. Part III presents three potential

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1. See STEVE WEINBERG, *THE REPORTER'S HANDBOOK* 3, 254-57 (Suzanne Phelps Weir ed., 3d ed., 1996) (explaining that for an investigative reporter, the key to producing projects is having a "documents state of mind").

2. See *id.* at 254-56 (providing numerous descriptions of news reports that grow out of the juvenile justice system).

3. This scenario is based on the Author's experience while reporting for WRUF-AM radio in Gainesville, Florida in 1996. After authorities denied the Author access to records that showed the amount of restitution owed by juveniles in Alachua County, Florida, an inside source at the courthouse confirmed that the outstanding amount was approximately a quarter of a million dollars.

solutions that would allow greater media access to juvenile records, while maintaining the confidentiality of juvenile offenders. Part IV concludes that the best solution would be to grant media organizations access to juvenile records on the condition that they not reveal juvenile offenders' identities. Part V discusses the policy implications of conditional access to juvenile records. Finally, the Conclusion applies conditional access to the hypothetical presented in the Introduction.

## I. AN EVOLVING JUVENILE JUSTICE SYSTEM

### A. *The Rehabilitative Beginning*

The first juvenile court was established at the turn of the twentieth century in response to concerns about the treatment of juveniles in the criminal court system.<sup>4</sup> With the emergence of juvenile courts came a new philosophy about how courts should treat children. In juvenile court proceedings, the court acted as the child's surrogate parent and focused on his or her rehabilitation.<sup>5</sup> To foster rehabilitation, the early juvenile court operated informally.<sup>6</sup> Juvenile judges assessed juveniles individually and prescribed treatments that were unique to each child.<sup>7</sup> Juvenile courts focused much of their attention on ensuring that juveniles were not labeled "criminals."<sup>8</sup> In juvenile court, a judge found a young defendant to be "delinquent" and then "committed" him or her to serve time in

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4. See Charles J. Aron & Michele S. C. Hurley, *Juvenile Justice at the Crossroads*, CHAMPION, June 1998, at 11. The first juvenile court was created in 1899 in Cook County, Illinois. See *id.*

5. See *id.* at 12. The parental role of the juvenile court was based on *parens patriae*, the concept that the juvenile court acted as parent rather than prosecutor and judge. See *Kent v. United States*, 383 U.S. 541, 554-55 (1966) (noting that theoretically, the juvenile court should determine the child's needs so as to provide guidance and rehabilitation, rather than to convict and punish the child for criminal conduct); Aron & Hurley, *supra* note 4, at 11 (explaining that the state should encourage juvenile offenders to be good citizens because the natural parents have been either unwilling or unable to provide guidance).

6. See Eric K. Klein, Note, *Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 AM. CRIM. L. REV. 371, 376-77 (1998) (explaining that the juvenile court lacked the formal procedures of adult court and instead was characterized by wide discretion); see also *Kent*, 383 U.S. at 555 (explaining that juvenile court proceedings are civil, not criminal).

7. See Klein, *supra* note 6, at 377.

8. See *id.*

various juvenile institutions.<sup>9</sup> In adult court, however, a judge found an adult "guilty" and then "sentenced" the adult to prison.<sup>10</sup> The primary goal of using different language in referring to juveniles was to avoid stigmatizing the juvenile as a criminal.<sup>11</sup>

The goal of rehabilitation was to help the juvenile become a productive member of society.<sup>12</sup> To ensure that a juvenile could reintegrate into society, state laws required juvenile justice officials to close juvenile proceedings and keep juvenile records confidential.<sup>13</sup> States viewed these protective measures as offering juveniles a second chance.<sup>14</sup> Thus shielded from the public eye, delinquent juveniles could complete their commitments and get on with their lives without fear of public disgrace.<sup>15</sup>

### *B. The Modern Juvenile Court*

Over the past one hundred years, the juvenile justice system has changed dramatically. Most notably, states have transferred juveniles to adult courts at an increasing rate.<sup>16</sup> Consequently, these juveniles lose the confidentiality measures afforded in juvenile court.<sup>17</sup> In most states, the records of juveniles in adult court are open to public inspection, as are adult criminal records.<sup>18</sup>

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9. See *id.* (noting the juvenile courts' adoption of euphemistic language to protect juveniles from the system of adult prosecutions).

10. See *id.*

11. See *id.*

12. See Aron & Hurley, *supra* note 4, at 11.

13. See Danielle R. Oddo, Note, *Removing Confidentiality Protections and the "Get Tough" Rhetoric: What Has Gone Wrong with the Juvenile Justice System?*, 18 B.C. THIRD WORLD L.J. 105, 107-08 (1998).

14. See *id.* at 108-09.

15. See *id.*

16. See Aron & Hurley, *supra* note 4, at 12 (noting a 68 percent increase in juvenile transfers from 1988 to 1992).

17. See Klein, *supra* note 6, at 403 (recognizing that "juveniles convicted as adults lose the secrecy of the juvenile court and obtain a criminal record and all of the attached stigma . . .").

18. See Robert R. Belair, "The Need to Know" Versus Privacy, *National Conference on Juvenile Justice Records: Appropriate Criminal and Noncriminal Justice Uses*, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics (1997) (visited Nov. 26, 1999) <<http://www.ojp.usdoj.gov/bjs/pub/ascii/ncjir.txt>>.

The increasing number of juvenile transfers to adult court brought about changes in the juvenile system.<sup>19</sup> In 1966, the United States Supreme Court, in *Kent v. United States*,<sup>20</sup> established limitations on the transfer of juveniles to adult court.<sup>21</sup> The Court ruled that juvenile courts must give juveniles a hearing before their transfer to adult court.<sup>22</sup> The *Kent* decision imposed on the juvenile court the first of many rigid procedures.

A year after *Kent*, the Supreme Court extended to juveniles many of the due process rights afforded adults.<sup>23</sup> The Court recognized that “[d]epartures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.”<sup>24</sup> Consequently, the Court extended to juveniles the right to notice of charges,<sup>25</sup> the right to counsel,<sup>26</sup> the right to confront and cross-examine witnesses,<sup>27</sup> and the privilege against self-incrimination.<sup>28</sup>

These changes have provided greater protection for juvenile offenders; however, the system still has many critics. Some claim that the juvenile justice system does not effectively deal with juvenile crime.<sup>29</sup> They argue that the juvenile justice system is arbitrary, often treating juveniles who commit violent crime in much the same way as juveniles who commit lesser offenses.<sup>30</sup>

Other critics claim that the juvenile justice system does not adequately care for young offenders.<sup>31</sup> These critics argue that the juvenile justice system lacks the resources needed to

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19. See Aron & Hurley, *supra* note 4, at 10-11.

20. 383 U.S. 541 (1966).

21. See *id.* at 561.

22. See *id.*

23. See *In re Gault*, 387 U.S. 1 (1967).

24. *Id.* at 18-19.

25. See *id.* at 33.

26. See *id.* at 41.

27. See *id.* at 56.

28. See *id.* at 55.

29. See Aron & Hurley, *supra* note 4, at 10.

30. See *id.* “[B]ecause violent juvenile offenders are not separated and categorized according to the severity of the crime, they subsequently receive sentences incongruent with the crimes they committed.” *Id.*

31. See Janet E. Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, 36 B.C.L. REV. 927, 928-29 (1995).

effectively intervene in the lives of troubled youths.<sup>32</sup> In addition, they contend that the individualized treatment and rehabilitation envisioned by the founders of the juvenile courts are rarely accomplished.<sup>33</sup> The United States Supreme Court acknowledged these concerns in 1966 when it noted that some juvenile courts "lack the personnel, facilities and techniques to perform adequately" in a parental role.<sup>34</sup>

### *C. Public Perceptions*

As the juvenile justice system changed from within, so too did the public's perception of juvenile offenders. Instead of believing that courts should take juveniles by the hand and guide them toward rehabilitation, many in modern society view juvenile crime as a growing problem that calls for "get tough" measures.<sup>35</sup> In addition, modern society is less inclined to protect the confidentiality of juvenile offenders at the expense of the public's right to be informed about juvenile crime and the manner by which the system handles the wrongdoers.<sup>36</sup> A 1998 California poll showed that the voting public believed that courts should not keep records of juveniles who commit serious crimes confidential.<sup>37</sup> The survey concluded that the public feels that courts make too many decisions regarding juvenile crime behind closed doors.<sup>38</sup> Similarly, a Salt Lake Tribune editorial stated that the public "has a right to know how the legal system deals with [juveniles who commit serious crimes]."<sup>39</sup> Despite the public's call for greater access to information about juvenile cases, most states do not allow media access to juvenile records except in certain circumstances.<sup>40</sup> For example, most states only

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32. *See id.*

33. *See id.*

34. *Kent v. United States*, 383 U.S. 541, 555-56 (1966).

35. *See* Aron & Hurley, *supra* note 4, at 10. "Increasingly, America's youth are labeled as 'parasitic,' 'animalistic,' 'depraved,' 'super predators.'" *Id.*

36. *See* Oddo, *supra* note 13, at 112.

37. *See Free Information, Public Says, THE QUILL*, Oct.-Nov. 1998, at 12.

38. *See id.*

39. *Combating Juvenile Crime*, SALT LAKE TRIB., Feb. 21, 1998, at A10.

40. *See* CHARLES P. SMITH ET AL., U.S. DEP'T OF JUSTICE, A NATIONAL ASSESSMENT OF SERIOUS JUVENILE CRIME AND THE JUVENILE JUSTICE SYSTEM: THE NEED FOR A RATIONAL RESPONSE, VOLUME III: LEGISLATION, JURISDICTION, PROGRAM INTERVENTIONS, AND CONFIDENTIALITY OF JUVENILE RECORD 229 (1980).

allow access to juvenile records involving violent and repeat juvenile offenders.<sup>41</sup>

## II. WHY CHANGE IS NEEDED

Confidentiality laws for juvenile records were created to protect the identities of juvenile offenders, but the effect of these laws far exceeds this intended scope. Confidentiality laws inhibit full and accurate reporting on the juvenile justice system.<sup>42</sup> Increased access to juvenile records would produce two benefits: (1) the public would become more educated about the juvenile justice system, and (2) the system would become more accountable.<sup>43</sup>

### A. Increased Public Awareness

Violent juvenile crime is on the rise,<sup>44</sup> and the public is demanding harsher treatment of juvenile offenders.<sup>45</sup> Consequently, states are "getting tough" by transferring more juveniles to adult court.<sup>46</sup> Ironically, public perceptions of juvenile crime are based almost exclusively on media coverage of juvenile incidents.<sup>47</sup> The media usually focus, however, only on the most violent juvenile offenders—those who commit murder, rape, and robbery and are subsequently transferred to adult court.<sup>48</sup> The media's focus on violent crime is driven by the sensational nature of violent offenses and the availability of

41. See *id.*; Belair, *supra* note 18 (noting that 30 states allow release of the name and photo of juveniles who are violent or repeat offenders).

42. See Susan S. Greenebaum, Note, *Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution?*, 44 WASH. U.J. URB. & CONTEMP. L. 135, 136 (1993).

43. See Oddo, *supra* note 13, at 119-21.

44. See OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, JUVENILE COURT STATISTICS 1995, 5 (1998) (reporting that the number of juveniles who committed murder, forcible rape, robbery, and aggravated assault has increased 99% in the past decade).

45. See Fox Butterfield, *More States Try Juveniles as Adults*, PITTSBURGH POST-GAZETTE, May 12, 1996, at A9. Almost all 50 states have overhauled their laws to allow courts to try more youths as adults. See *id.*

46. See *id.*

47. See Kathleen M. Laubenstein, Comment, *Media Access to Juvenile Justice: Should Freedom of the Press be Limited to Promote Rehabilitation of Youthful Offenders?*, 68 TEMP. L. REV. 1897, 1897 (1995).

48. See *id.*; Aron & Hurley, *supra* note 4, at 10.



access to information once the juvenile is transferred to adult court.<sup>49</sup>

Because of the media's focus on violent juvenile crime, public perception of the juvenile justice system primarily reflects the idea that juveniles who commit crimes are no different from adults who commit crimes.<sup>50</sup> Although this perception may be true in some cases, the public is not fully aware of the complexity involved in processing juvenile offenders through the juvenile justice system.<sup>51</sup> The public is unable to call for changes other than harsher treatment of juvenile offenders because it is not fully aware of other aspects of the juvenile justice system that deserve attention.<sup>52</sup> If the media were allowed greater access to information about the juvenile justice system, the public would be better informed and could better assess the system and its shortcomings.<sup>53</sup> In response, legislatures might consider changes other than "get tough" measures, such as the increased number of transfers of juveniles to adult courts. Legislatures might instead work to preserve and strengthen the juvenile justice system.<sup>54</sup>

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49. See *supra* notes 14-16 and accompanying text.

50. See Aron & Hurley, *supra* note 4, at 10.

51. See Gordon A. Martin, *Judicial Access to Information Critical to the Juvenile Court Process and to Preserving the Juvenile Justice System*, National Conference on Juvenile Justice Records: Appropriate Criminal and Noncriminal Justice Uses, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics (1997) (visited Nov. 26, 1999) <<http://www.ojp.usdoj.gov/bjs/pub/ascii/ncjjr.txt>> "[I]f we do not show the public what we are accomplishing with our delinquent juveniles, then our system and the 100-some years that have gone into its creation . . . will come to an end." *Id.*

52. See *id.*

53. See Oddo, *supra* note 13, at 120-21.

54. See *id.* at 134.

*B. Juvenile Justice Accountability*

Throughout its history the media has operated as a check on the governmental agencies it investigates.<sup>55</sup> Nonetheless, confidentiality concerns have stifled this important media function in the juvenile justice system context.<sup>56</sup> Increased media scrutiny “may move juvenile courts and agencies into a more aggressive posture, motivating increased funding for more effective and efficient methods of juvenile treatment.”<sup>57</sup>

At the same time, media exposure would provide juvenile systems that are already striving to improve their programs and methods with a vehicle to publicize their progress.<sup>58</sup> Some juvenile justice administrators are frustrated with their inability to better publicize that the system “work[s] hard for everyone’s benefit.”<sup>59</sup> Instead, they are haunted by a reputation based primarily on the increase in violent juvenile crime and the perception that juvenile courts are too lenient on juvenile offenders.<sup>60</sup>

Finally, greater accountability on the part of the juvenile justice system would serve the best interests of juvenile offenders. The media could investigate whether judges, case workers, and attorneys handle juvenile cases appropriately.<sup>61</sup> Perhaps the most effective way to compare the handling of various juvenile cases would be to compare the records. By increasing media scrutiny, fewer juveniles would slip through

55. See *Sheppard v. Maxwell*, 384 U.S. 333, 349-50 (1966).

A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.

*Id.*

56. See Note, *The Public Right of Access to Juvenile Delinquency Hearings*, 81 MICH. L. REV. 1540, 1550-51 (1983) [hereinafter *Public Right of Access*] (arguing that juvenile proceedings should be subject to greater media scrutiny given their informality).

57. Gordon A. Martin, Jr., *Open the Doors: A Judicial Call to End Confidentiality in Delinquency Proceedings*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 393, 406 (1995).

58. See *id.*

59. *Id.*

60. See *id.* at 394-95 (arguing that the closed juvenile system fosters fear and mistrust because the system appears to coddle violent juveniles).

61. See Oddo, *supra* note 13, at 121.

the cracks of a system that is overcrowded and lacks the resources necessary to deal with each child as an individual.<sup>62</sup> Also, improving and strengthening the system would offer juveniles a greater chance at rehabilitation, which is the original intent of the juvenile justice system.<sup>63</sup>

### III. POTENTIAL SOLUTIONS

Many states allow access to juvenile records under certain circumstances.<sup>64</sup> For example, many states allow access to records involving violent and repeat juvenile offenders.<sup>65</sup> This Article, however, does not address the merits of this form of access; instead, it focuses on media access to the bulk of juvenile records that remain closed and that could reveal valuable information about the juvenile justice system. Because the cases that are kept in juvenile court usually do not involve violent crime, the state maintains an interest in keeping the juvenile offenders' identities confidential.<sup>66</sup> Though some do not believe that juvenile delinquents can change their behavior, rehabilitation of non-violent juvenile offenders remains the primary goal of juvenile justice agencies.<sup>67</sup> This Article, therefore, only proposes solutions that would permit media access while protecting the identities of juvenile offenders.

#### A. Juvenile Record Summaries

The State of Utah recently changed its juvenile records confidentiality law to allow media access to juvenile record summaries commonly known as "media rap sheets."<sup>68</sup> Media rap

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62. See Irene Merker Rosenberg, *Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists*, 1993 WIS. L. REV. 163, 165 (1993) (describing problems in the New York City juvenile justice system).

63. See Laubenstein, *supra* note 47, at 1905-06.

64. See Belair, *supra* note 18.

65. See *id.*

66. See Laubenstein, *supra* note 47, at 1901-06 (discussing the relationship between rehabilitation and juvenile offender confidentiality).

67. See *supra* notes 4-12 and accompanying text.

68. See UTAH CODE ANN. §. 4-202.02(2)(C) (1996). A "media rap sheet" is formally known as a delinquency history summary. See *id.*; see also Michael R. Phillips, *Providing Statewide Access to Juvenile Court Records and Proceedings in Utah*, National Conference on Juvenile Justice Records: Appropriate Criminal and Noncriminal Justice Uses, U.S. Department of Justice Office of Justice Programs

sheets are available only for juvenile offenders aged sixteen or seventeen who are charged with a felony or an offense that would be a felony if committed by an adult.<sup>69</sup> The media rap sheet includes the juvenile's name, a chronological listing of the juvenile's prior offenses, and the court's disposition of each offense.<sup>70</sup> By providing the media rap sheet, the Utah legislature intended to help the media understand a juvenile's record and ensure accurate news reporting.<sup>71</sup> Proponents of the media rap sheet assume that the media will jump to conclusions unless officials present the information contained in juvenile records in a way that leads to accurate evaluations.<sup>72</sup> Utah's approach may appeal to juvenile justice officials because it allows them a way to control the dissemination of information and only provides reporters with a limited view of a juvenile's record.<sup>73</sup> Although Utah permits media rap sheets to include the names of juvenile offenders,<sup>74</sup> the names could easily be omitted.

The problem with Utah's approach is that a media rap sheet essentially functions as a filtering mechanism that agency officials can use to manipulate the information disseminated to the media.<sup>75</sup> States that offer media rap sheets assume that journalists are irresponsible and unable to accurately interpret government documents.<sup>76</sup> Although limited media access may be better than no access, Utah's approach inhibits the media's ability to gather and present the news.<sup>77</sup> Utah's approach also diminishes the media's function as a check on government because media rap sheets provide a censored view of the material contained in juvenile records.<sup>78</sup>

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Bureau of Justice Statistics (1997) (visited Nov. 26, 1999).  
 <<http://www.ojp.usdoj.gov/bjs/pub/ascii/ncjir.txt>>.

69. See UTAH CODE ANN. § 4-202(2)(C).

70. See *id.*

71. See Phillips, *supra* note 68.

72. See *id.*

73. See UTAH CODE ANN. § 4-202(2)(C).

74. See *id.*

75. See Phillips, *supra* note 68.

76. See *id.* (arguing that state officials believe that the media will jump to conclusions without a simply formatted rap sheet).

77. See *id.*

78. See *id.*

*B. Redacted Juvenile Records*

One seemingly simple solution would be to allow the media access to all juvenile records with the names of the juveniles redacted. This is a constitutionally viable alternative because there would be no restrictions on the media's use of the information provided.<sup>79</sup> The approach serves both news reporters, who gain access to a tremendous amount of information, and juvenile offenders, whose identities remain confidential.<sup>80</sup>

A court used redaction in a high-profile murder case in Florida.<sup>81</sup> The case involved the murders of five college students in Gainesville, Florida in 1990.<sup>82</sup> Police arrested thirty-eight-year-old Danny Rolling,<sup>83</sup> who later confessed to the crimes.<sup>84</sup> Following Rolling's arrest, the media sought access to records about the case.<sup>85</sup> The judge responded by releasing more than seven thousand records, including police reports, physical evidence, and other portions of the criminal discovery.<sup>86</sup> The court's order to release the documents became controversial because a subsequent, unrelated Florida Supreme Court decision cast doubt on the order's constitutionality.<sup>87</sup> The controversy concerned whether the order unlawfully invaded the privacy of third parties named in the records.<sup>88</sup> To relieve the court of deciding the constitutionality of releasing individual documents, the media suggested a compromise that the court ultimately adopted.<sup>89</sup> This plan called for the court to

79. See generally *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 105-06 (1979) (holding unconstitutional an order prohibiting publication of a juvenile offender's name obtained lawfully through routine reporting techniques).

80. See Greenebaum, *supra* note 42 at 153-54.

81. See Charles N. Davis, *Access to Discovery Records in Florida Criminal Trials: Public Justice and Public Records*, 6 U. FLA. J.L. & PUB. POL'Y 297, 316 (1994).

82. See *id.* at 297-98.

83. See *id.* at 298.

84. See *id.* at 297 n.1.

85. See *id.* at 298. Before Rolling's arrest, little information was released to the media. See *id.*

86. See *id.* at 298-99. The first order released some 4330 records, the judge later released another 2800 records. See *id.*

87. See *id.* at 315-16.

88. See *id.* at 316.

89. See *id.*

redact the names and addresses of individuals whose privacy might be violated by the release of the records.<sup>90</sup>

Providing redacted records to the media would undoubtedly create an administrative burden for juvenile courts. For example, the time and effort needed to redact each name and address could be substantial. This potential complication did not, however, deter the Florida court from agreeing that redaction represented the best option to serve both the privacy rights of individuals implicated in records and the media's right to gather news.<sup>91</sup>

The administrative burden of redacting this information could be eased by advances in technology. For example, future computer technology may facilitate the scanning of juvenile records and electronic redaction. Until such technology is widely available and affordable, however, providing the media with redacted juvenile records is probably not a feasible solution for most states.

### *C. Conditional Access to Juvenile Records*

Given the administrative limitations of redaction, a better alternative would be to allow reporters access to all juvenile records on the condition that they not reveal the identities of the juvenile offenders involved. One problem with this approach; however, is the possibility that such a condition may function as an unconstitutional prior restraint against the media.

For example, in *Oklahoma Publishing Co. v. District Court*,<sup>92</sup> the United States Supreme Court considered the constitutionality of a broad court order that prohibited the media from revealing the identity of a juvenile charged with murder.<sup>93</sup> In *Oklahoma Publishing Co.*, the media lawfully obtained the juvenile offender's name during a hearing and lawfully photographed the juvenile outside the courthouse.<sup>94</sup> The Court held that because the juvenile's name and picture were publicly revealed, the broad protective order constituted

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90. *See id.*

91. *See id.*

92. 430 U.S. 308 (1977).

93. *See id.* at 308-09.

94. *See id.* at 309.

an unconstitutional prior restraint.<sup>95</sup> The Court distinguished prior restraints from conditional access as follows: "Classic prior restraints diminish the flow of information to the public . . . [while] conditional access maximizes the flow of information to the public."<sup>96</sup> As noted in *Oklahoma Publishing Co.*, a prior restraint prevents the media from revealing information lawfully obtained from nonconfidential sources.<sup>97</sup> In contrast, conditional access provides the media with information it otherwise would not have on the condition that the media comply with stated restrictions.<sup>98</sup>

In a similar decision, *Smith v. Daily Mail Publishing Co.*,<sup>99</sup> the Supreme Court considered the constitutionality of a Virginia statute that criminalized the publishing of a juvenile offender's name.<sup>100</sup> In *Daily Mail*, newspapers published the juvenile offender's name after lawfully obtaining it by canvassing various witnesses and others involved in the investigation.<sup>101</sup> The Court reasoned that it would uphold the statutory penalty only if it furthered a "state interest of the highest order."<sup>102</sup> The Court struck down the statute, holding that the state's interest in protecting the juvenile's confidentiality did not justify the statutory penalty.<sup>103</sup>

Following *Daily Mail*, the Supreme Court considered another case that involved potential limitations on the reporting of lawfully obtained information. In *Florida Star v. B.J.F.*,<sup>104</sup> a newspaper published the full name of a rape victim after obtaining it from a report placed in a sheriff's department press room.<sup>105</sup> A jury found the newspaper civilly liable for violation of a state statute that prohibited the media from publicizing the name of a rape victim.<sup>106</sup> The Supreme Court refused to hold *Florida Star* liable, relying on *Daily Mail's* principle that if the

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95. See *id.* at 311-12.

96. *Public Right of Access*, *supra* note 56, at 1563-64.

97. See *Oklahoma Publ'g Co.*, 430 U.S. at 310.

98. See *Public Right of Access*, *supra* note 56, at 1563-64.

99. 443 U.S. 97 (1979).

100. See *id.* at 97.

101. See *id.* at 99.

102. *Id.* at 103.

103. See *id.* at 106.

104. 491 U.S. 524 (1989).

105. See *id.* at 527.

106. See *id.* at 526-29.

media lawfully obtains information about a matter of public significance, a state “may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.”<sup>107</sup> The Court in *B.J.F.* recognized that when the government releases information to the media, it expects that the media will further disseminate the information.<sup>108</sup> The Court held that punishing the newspaper for publishing information the government made available did not further a “state interest of the highest order.”<sup>109</sup>

In *Oklahoma Publishing Co., Daily Mail*, and *B.J.F.*, the Supreme Court held unconstitutional measures that hindered the media’s ability to reveal information it had lawfully obtained from non-confidential sources.<sup>110</sup> The Court did not decide: (1) whether a court or statute may constitutionally allow media access to confidential juvenile records on the condition that the media keep the identities of juvenile offenders confidential, and (2) whether a state may enforce such conditional access by punishing the media for violating this condition.

The Supreme Court considered the nature of conditional access in *Seattle Times Co. v. Rhinehart*.<sup>111</sup> In *Seattle Times Co.*, the spiritual leader of a religious group sued several media representatives for defamation and invasion of privacy.<sup>112</sup> During discovery, the spiritual leader refused to disclose the identities of the group’s donors; he claimed that revealing the information invaded the donors’ and members’ privacy.<sup>113</sup> The trial court ordered the spiritual leader to disclose the withheld information,<sup>114</sup> and it later issued a protective order that prohibited media representatives from reporting any information contained in the discovery materials.<sup>115</sup> On appeal, the Supreme Court set forth a two-part test. The Court stated that a protective order limiting the use of information obtained during discovery would be upheld if it: (1) furthers an important

107. *Id.* at 533 (citing *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979)).

108. *See id.* at 538-39.

109. *Id.* at 541.

110. *See id.*; *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 105-06 (1979); *Oklahoma Publ’g Co. v. District Court*, 430 U.S. 308, 311-12 (1977).

111. 467 U.S. 20 (1984).

112. *See id.* at 22-23.

113. *See id.* at 24.

114. *See id.* at 25.

115. *See id.* at 27.



or substantial governmental interest, and (2) is narrowly tailored to protect the governmental interest.<sup>116</sup>

The Court reasoned that the first part of the test was satisfied because the government has a substantial interest in protecting the integrity of the discovery process.<sup>117</sup> The Court noted that it was an abuse of the discovery process for a litigant to publicly disseminate information it would not have obtained but for discovery.<sup>118</sup> The Court found that the second part of the test was also satisfied because the protective order was limited to information obtained through the discovery process.<sup>119</sup> The protective order also did not restrict the dissemination of information obtained from other sources, even if the information was identical to information contained in the discovery materials.<sup>120</sup>

Just as it is a privilege to gain access to information through discovery,<sup>121</sup> it is a privilege to gain access to juvenile records.<sup>122</sup> Because access to juvenile records is a privilege, *Seattle Times Co.* provides a court or legislature with the power to limit a reporter's use of information obtained from juvenile records.<sup>123</sup> Accordingly, it follows that a court or legislature could allow a reporter access to juvenile records on the condition that the reporter not reveal juvenile offender identities. The condition passes the Court's two-part test set forth in *Seattle Times Co.*<sup>124</sup> First, the condition is necessary to further the substantial governmental interest in keeping the identity of juvenile offenders confidential to promote rehabilitation.<sup>125</sup> Second, the narrowly tailored condition only protects the identity of juvenile offenders; it does not prohibit the dissemination of information lawfully obtained from another source.<sup>126</sup>

116. *See id.* at 32.

117. *See id.* at 35.

118. *See id.* at 35-36.

119. *See id.* at 37.

120. *See id.*

121. *See id.* at 32.

122. *See* Greenebaum, *supra* note 42, at 159. Historically, juvenile proceedings and records have been closed; thus, the court may allow media access on the condition that the juvenile's identity not be disclosed. *See id.*

123. *See Seattle Times Co.*, 467 U.S. at 32.

124. *See id.*

125. *See id.*

126. *See id.*

To enforce conditional access, a court could punish a violation of the condition through its contempt power, or a legislature could impose various statutory sanctions for violation of the condition. These punishments appear to be distinguishable from the unconstitutional punishments analyzed in *Daily Mail* and *B.J.F.* In *Daily Mail* and *B.J.F.*, the media disseminated information that the public could have obtained on its own.<sup>127</sup> In *Daily Mail*, the media obtained the information by canvassing witnesses;<sup>128</sup> in *B.J.F.*, the media obtained the information from a publicly released report.<sup>129</sup> In contrast, conditional access presumes that the juvenile's identity cannot be obtained elsewhere.<sup>130</sup> As long as a reporter cannot obtain the juvenile's identity except through the juvenile's record, a court or statute could punish the violation of a condition imposed on access without offending the Constitution.<sup>131</sup> Conversely, a court might find that such punishment is unconstitutional because the juvenile's identity is "lawfully obtained," albeit through conditional access.<sup>132</sup>

### 1. Conditional Access in Florida

Florida's juvenile records confidentiality statute supplies an example of statutory conditional access.<sup>133</sup> The statute provides that "[t]he court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper . . . ."<sup>134</sup> The Florida Attorney General considered whether, under the statute, the media could gain access to confidential juvenile dependency records and then publicize statistical results in a news report.<sup>135</sup> The Attorney General's opinion recognized that the media's scrutiny of

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127. See *Florida Star v. B.J.F.*, 491 U.S. 524, 525 (1989); *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 107 (1979).

128. See *Daily Mail*, 443 U.S. at 99.

129. See *B.J.F.*, 491 U.S. at 527.

130. See *Greenebaum*, *supra* note 42, at 158.

131. See *id.*

132. See *id.*

133. See FLA. STAT. ch. 39.0132(3) (1998).

134. *Id.*

135. See 91-32 Op. Att'y Gen. 99, 99 (Fla. 1991).

government is a "well established and socially recognized tradition . . . ."<sup>136</sup> The opinion concluded that the media could inspect the otherwise confidential juvenile records for the purpose of compiling and reporting on statistics.<sup>137</sup> Although the Florida statute does not explicitly prohibit the media from revealing a juvenile's identity,<sup>138</sup> it does so by implication. In addition, the statute implicitly prohibits the media from revealing all other non-statistical information it obtains from the records.<sup>139</sup> Furthermore, the statute allows the court to punish by contempt any conditional access violation.<sup>140</sup> Although Florida's statute represents a step in the right direction, it limits the media to reporting only statistical information gathered from juvenile records.<sup>141</sup> Reporters may, however, wish to report other findings that the juvenile records might reveal. For example, reporters may wish to publish a report on the facts of particular cases, the way in which various juvenile justice actors handled cases, and the treatment afforded the juveniles involved.<sup>142</sup> The public needs to know this information to evaluate the effectiveness of the juvenile justice system, and the revelation of such information does not infringe on a juvenile offender's confidentiality.<sup>143</sup> A better statute, therefore, would allow media access for the purpose of reporting all information contained in juvenile records, except for information that identifies juvenile offenders.

## 2. Other Examples of Conditional Access

Various courts have struggled with whether they should grant the media conditional access to juvenile proceedings and records.<sup>144</sup> Courts have difficulty determining how to narrowly tailor the protective order to avoid creating an unconstitutional prior restraint.<sup>145</sup> The two cases that follow both involved access

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136. *Id.* at 102.

137. *See id.*

138. *See* FLA. STAT. ch. 39.0132(3).

139. *See id.*

140. *See id.*

141. *See id.*

142. *See* Laubenstein, *supra* note 47, at 1906-07.

143. *See id.*

144. *See* Greenebaum, *supra* note 42, at 153.

145. *See, e.g.,* McClatchy Newspapers, Inc. v. Superior Court, No. F016450, 1991 WL

to juvenile proceedings, which is sufficiently analogous to gaining access to juvenile records; in both situations, the state has an interest in protecting the identities of juvenile offenders.

The Illinois Supreme Court in *In re a Minor*,<sup>146</sup> enforced a protective order that granted conditional access in a juvenile dependency case.<sup>147</sup> The trial judge admitted the reporter to the dependency proceedings on the condition that the reporter not reveal the identities of the juvenile victims.<sup>148</sup> The Illinois Supreme Court balanced the state's interest in preserving the juvenile victims' confidentiality with the media's right of free expression.<sup>149</sup> The court concluded that prohibiting the media from revealing the juvenile victims' names did not interfere with the media's "constitutional role of acting as a conduit for the public in generating the free flow of ideas, keeping the public informed of the workings of governmental affairs, and checking abuses by public officials."<sup>150</sup>

A Minnesota court also allowed conditional access in *Austin Daily Herald v. Mork*.<sup>151</sup> The court allowed the media to attend a criminal trial during the testimony of various juvenile victims on the condition that the media not reveal the juvenile victims' names or information about their records.<sup>152</sup> The Minnesota Court of Appeals upheld the order as constitutional,<sup>153</sup> finding that the trial court "[had] not restrained the media representatives from publishing information already in their

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303300, at \*1 (Cal. Ct. App. Sept. 24, 1991) (holding unconstitutional a protective order that allowed media access to juvenile files on the condition that the media not reveal the juveniles' identities even if the media lawfully obtained the information from other sources); *San Bernardino County Dep't of Pub. Soc. Servs. v. Superior Court*, 283 Cal. Rptr. 332, 344 (Cal. Ct. App. 1991) (holding unconstitutional a protective order issued in a juvenile dependency case that restricted the media's ability to interview trial participants, prohibited the media from publishing certain information even if lawfully obtained, and prohibited the media from doing anything in the future to interfere with potential efforts to reunite the family); *In re H.N.*, 632 A.2d 537, 539 (N.J. Super. Ct. App. Div. 1993) (holding unconstitutional a protective order that prohibited news media from revealing information about a juvenile that had been lawfully obtained from sources other than statutorily protected records).

146. 595 N.E.2d 1052 (Ill. 1992).

147. *See id.* at 1052.

148. *See id.* at 1053.

149. *See id.* at 1056-57.

150. *Id.* at 1057.

151. 507 N.W.2d 854 (Minn. Ct. App. 1993).

152. *See id.* at 856.

153. *See id.* at 858 (finding that conditional access is not a prior restraint).

possession about the juveniles or their prior involvement with the juvenile court system, or information the media might later obtain from other sources."<sup>154</sup> The court noted that the media could either abide by the condition and gain access to the juveniles' testimony or reject the condition and be excluded.<sup>155</sup>

#### IV. THE BEST SOLUTION

Juvenile record summaries do not provide the best solution to the media access problem because this approach allows the government to decide what information reaches the media. Juvenile record summaries, therefore, inhibit the media's ability to inform the public and to act as a check on government. Granting media access to juvenile records with juvenile offenders' identities redacted would be a better solution. Redacting names and addresses from juvenile records may not be feasible, however, because of administrative constraints. Therefore, the best solution would be to allow the media access to juvenile records on the condition that juvenile offenders' identities remain confidential. Conditional access is a viable solution because it protects the confidentiality of juvenile offenders and allows the media to access valuable information about the juvenile justice system.

States could implement conditional access to juvenile records in two ways. First, a state legislature could pass a conditional access statute.<sup>156</sup> Second, juvenile court judges could grant conditional access on a case-by-case basis. As previously discussed, many courts are already attempting to grant conditional access.<sup>157</sup> The problem with allowing courts to implement conditional access is that the results are likely to be arbitrary and inconsistent.

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154. *Id.* at 856.

155. *See id.* at 858.

156. The statute could be worded as follows:

Records custodians shall permit news reporters to inspect all juvenile court records if the news reporter agrees not to reveal the identities of any juveniles indicated in the records. The news reporter may, however, reveal the identity of a juvenile if the reporter obtains such information from a source other than the juvenile court record.

157. *See* discussion *supra* Part III.C.2.

## V. EFFECT ON POLICY

Two competing policies are implicated when the media seeks access to juvenile records: (1) juveniles deserve the opportunity to be rehabilitated, and (2) the public deserves to know how the juvenile justice system operates. Conditional access to juvenile records strikes a balance between these two important policies.

The policy favoring juvenile rehabilitation has existed since the creation of the juvenile justice system one hundred years ago.<sup>158</sup> Over time, the public has called for tougher measures to combat violent juvenile crime;<sup>159</sup> however, the goal of rehabilitation has not disappeared, especially in cases of non-violent juvenile offenders.<sup>160</sup> Maintaining the confidentiality of a juvenile offender's identity represents a concept that is central to rehabilitation.<sup>161</sup> Conditional access to juvenile records does not threaten a juvenile offender's confidentiality, however, because the condition restricts the media from disclosing the juvenile's identity.<sup>162</sup> Access to juvenile records is a privilege, and reporters who abuse the privilege of conditional access could face contempt charges or other sanctions.<sup>163</sup>

At the same time, conditional access to juvenile records favors the policy that the public deserves to be informed of the

158. See Klein, *supra* note 6, at 376.

159. See *id.* at 382. In the last 20 to 30 years, the trend in juvenile justice has been toward a more punitive system. See *id.* Despite this trend, various states continued to experiment with rehabilitative programs in hopes of keeping juvenile justice focused on rehabilitation. See *id.*

160. See *id.* at 403 (explaining that today, juveniles who are not transferred to adult court and remain in the juvenile justice system have access to education, therapy, and job training—experiences that are important to rehabilitation).

161. See Laubenstein, *supra* note 47, at 1901. Anonymity can aid rehabilitation in four primary ways: (1) by preventing the self-perpetuating stigma of delinquency; (2) by deterring youths from committing crimes for the sake of publicity or attention; (3) by eliminating an accompanying stigma on family members, which could otherwise seriously impair the juvenile's familial relationships; and (4) by preventing a deterioration in the juvenile's interaction with his peers, the educational system, and the surrounding community.

*Id.*

162. See discussion *supra* Part III.C.

163. See FLA. STAT. ch. 39.0132(3)(1998). Florida's statute, which grants conditional access to juvenile records under certain conditions, permits courts to charge violators with contempt. See *id.*, see also discussion *supra* Part III.C.1.

workings of the juvenile justice system.<sup>164</sup> An informed public can better assess the juvenile justice system's shortcomings and call for appropriate changes.<sup>165</sup> In addition, the public deserves to know whether the system is working to increase public safety.<sup>166</sup> Conditional access to juvenile records allows media access to information about the juvenile justice system, while protecting the identities of juvenile offenders.<sup>167</sup>

### CONCLUSION

Most states deny media access to juvenile records except in cases of violent or repeat juvenile offenders. Because non-violent juvenile crime constitutes the majority of juvenile cases, the media needs access to these juvenile records when reporting on the juvenile justice system. Allowing media access to confidential juvenile records on the condition that the media not reveal identifying information represents the best solution to the media access problem. Conditional access would allow a reporter to investigate many aspects of the juvenile justice system without interfering with the state's efforts to rehabilitate juvenile offenders.

For example, the reporter in the hypothetical described in the Introduction to this Article could gain conditional access to the records of juveniles who owe restitution to the victims of their crimes. The reporter could use the records to compute the total amount of restitution owed by juveniles in the county and to describe the efforts of the juvenile justice system in enforcing the restitution orders. The reporter could not reveal the identities of individual juvenile offenders who owe restitution, but the inability to report this information would not make the report any less newsworthy.

Many will argue that unconditional access to juvenile records is the right solution and that finding a middle ground is

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164. See Oddo, *supra* note 13, at 120-121 (arguing that the public has a right to know how the juvenile justice system operates).

165. See *id.*

166. See *id.* (reasoning that the juvenile justice system should be open to public exposure because greater public exposure would increase juvenile justice accountability).

167. See Greenebaum, *supra* note 42, at 159 (arguing that "[r]eleasing the name of a juvenile delinquent is not essential to a well-written and newsworthy story").

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unacceptable. Any realistic solution, however, must consider the various interests involved. Conditional access balances the state's interest in rehabilitation of juvenile offenders with the public's interest in being informed about the juvenile justice system. Maintaining a juvenile offender's confidentiality is a small price to pay for access to a wealth of information regarding juvenile justice.



